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September 9, 2014

Via ECF, Overnight Mail, and E-Mail

The Hon. Lewis A. Kaplan
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *In re Bank of New York Mellon Corp. Forex Litigation*, No. 12 MD 2335 (LAK)
(S.D.N.Y.)

Dear Judge Kaplan:

We write on behalf of The Bank of New York Mellon (“BNYM”) in regard to the letter submitted to the Court at approximately 4:30 p.m. today by Interim Co-Lead Counsel for the Customer Classes (“Plaintiffs”) in connection with their request for a ruling that an internal BNYM e-mail transmitted in December 2007 is not protected by the attorney-client privilege.

Plaintiffs have included with their motion a memorandum produced by a nonparty investment manager (“Robeco”) that appears to have been retained by BNYM to manage funds for The Bank of New York Mellon 401(k) Savings Plan (“BNYM In-House Plan”). The memorandum contains legal advice and opinions of the Groom Law Group that were provided to BNYM in June 2009 regarding the availability of Section 408(b)(18) of the Employee Retirement Income Security Act for FX transactions between BNYM and the BNYM In-House Plan. Plaintiffs did not provide BNYM with any advance notice that they planned to submit this memorandum to the Court or file it on the Court’s electronic filing system.

The memorandum contains information that BNYM believes is likely protected by the attorney-client privilege and was inadvertently produced to Plaintiffs. In addition, based upon our initial review of these materials, we have concerns regarding the accuracy of Plaintiffs’ representations to the Court regarding this memorandum. Accordingly, we respectfully ask the Court to defer consideration of Plaintiffs’ September 9 Letter and attachments until after September 11, 2014, to give counsel an adequate opportunity to review the materials, consult with BNYM, and, if necessary, meet and confer with Plaintiffs regarding their representations to

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The Hon. Lewis A. Kaplan
September 9, 2014
Page 2

the Court. We expect to advise the Court of BNYM's position regarding these matters on September 11, 2014. While these issues are pending, BNYM will also contact the ECF Help Desk and request to have the memorandum temporarily sealed and made invisible to the public.

We are available at the Court's convenience to discuss any of the foregoing.

Respectfully submitted,

/s/ Reid M. Figel

cc: MDL Litigation Service List
USAO Litigation Service List